No. 10 ORIGINAL

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JOHN T. FEY, Clerk

In the Supreme Court of the United States

OCTOBER TERM, ~~1956~~ 1958

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF LOUISIANA

Memorandum for the State of Louisiana Regarding the Motion of the State of Texas for Leave to File a Brief as Amicus Curiae, and the Memorandum by the United States in Response Thereto.

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PURPOSE OF THIS MEMORANDUM

Louisiana does not desire to become burdensome to this Honorable Court by continually filing briefs in this cause. However, since the Court has allowed the Amicus Curiae Brief of the State of Texas, we find it mandatory for Louisiana to file this memorandum.

This is particularly true because the brief of Texas contains inaccurate statements as to the issues involved and to interpretations of the Submerged Lands Act.

For these reasons, we find it is necessary to submit this brief.

STATEMENT

On June 3, 1957 this Court granted the State of Texas leave to file its motion and brief as Amicus Curiae.

Louisiana re-asserts its claims as heretofore presented in its answer and briefs filed in this matter and without abandoning its said claims files this memorandum in connection with the brief Amicus Curiae aforesaid.

In its brief as amicus curiae the State of Texas says that the gulfward boundary of Louisiana at the time that it entered the Union is the only issue which requires the determination of this Court, and that the extent of the Texas boundary is in no way controlling as to Louisiana (Tex. Brief, p. 2). Texas also states that the question in this case is whether Louisiana's boundary is an exception to the three mile rule generally adhered to by the United States. (Tex. Brief, p. 3). These are not correct or accurate statements as to the issues here involved.

The first question involved in this case is the location of the national boundary of the United States in the Gulf of Mexico. A determination of that boundary determines also the boundary of Louisiana because the boundaries of the coastal states in the continental United States are co-extensive with the boundary of the United States in the seas surrounding its shores. (See Senate Report No. 133, 83rd Congress, 1st Session, p. 59, setting forth the legislative history of the Submerged Lands Act and the Outer Continental Shelf Lands Act. See also cases cited, pages 38 to 42 of Louisiana's brief in opposition to motion for judgment by the United States).

If the national boundary extends to the edge of the continental shelf, as Louisiana contends, then Louisiana's boundary also extends that far. On the other hand, if the boundary of the United States is only three leagues from coast in the Gulf of Mexico, then Louisiana's boundary also extends three leagues from coast in the Gulf of Mexico. There is no difference between the position of Texas and Louisiana with respect to these boundaries. Texas has, by the act of its legislature declared its boundaries to be the edge of the continental shelf in the Gulf of Mexico. (Article 1592A, Revised Civil Statutes of Texas, Acts of 1947, 50th Leg. p. 490, Ch. 287). There is no doubt that when Texas was admitted to the Union its boundaries were fixed three leagues from land in the Gulf of Mexico. Louisiana has insisted throughout this proceeding that the boundaries of Texas and of Florida have been definitely fixed as three leagues in the Gulf of Mexico prior to the time when Texas extended its boundaries to the edge of the continental shelf. Since the boundaries of Texas and of Florida have been so fixed and have been recognized by the various acts of Congress as three leagues in the Gulf of Mexico, these boundaries cannot be changed by Congress, nor by the Court, without the consent of these states. See: *New Mexico vs. Colorado*, 267 U. S. 30, 69 L. Ed. 499; *Louisiana vs. Mississippi* 202 U. S. 1, 50 L. Ed. 913; *Shively vs. Bowlby*, 152 U. S. 1, 27, 38 L. Ed. 331, 341.

Louisiana has consistently taken the position that

the Congress and the Court must recognize the boundaries of Texas and Florida as extending three leagues into the Gulf of Mexico. This state has also taken the position that prior to the passage of the Outer Continental Shelf Lands Act the United States has consistently declared its national boundary to be three leagues from coast in the Gulf of Mexico, and it has never asserted that the national boundaries in the Gulf of Mexico are only three miles offshore. This position is amply supported by the various treaties and other authorities which are discussed on pages 96 to 106, inclusive, of Louisiana's original brief.

Louisiana's boundary in the Gulf of Mexico is described in the act of admission as including all islands within three leagues of its coast. This boundary has always been considered by the State and by the United States to include also the submerged lands within three leagues of its coast. Consequently, Louisiana has from time immemorial occupied and possessed these submerged lands under a claim of ownership by virtue of its act of admission. These facts can be proved by the testimony of witnesses, and documentary evidence from the archives of the State and of the United States. If the court should conclude that the act of admission does not definitely fix Louisiana's boundary as three leagues from the coast in the Gulf of Mexico, we submit that the definition of Louisiana's boundary in the act of admission is susceptible to more than one interpretation. We, therefore, further submit that the Court either

recognize the boundary as having been fixed as three leagues in the Gulf of Mexico in Louisiana's act of admission or else it must seek facts which would aid the court in properly interpreting this boundary. In so doing, we urge the Court to consider:

1. The manner in which the act of Congress admitting Louisiana has been interpreted by the State and the Federal Government over a long period of time.

2. The Court should as a matter of law interpret the act of admission as one intending to put Louisiana on an equal footing with the other gulf coast states in the matter of territorial sovereignty in the waters and submerged lands adjoining its coast.

The Submerged Lands Act in Section 4 specifically gives to the State the right to prove that its boundaries are at least three leagues from coast in the Gulf of Mexico. This section of the act (43 U.S.C. 1312) contains the following significant sentence:

> "Any claim heretofore or hereafter asserted whether by constitutional provision, statute, *or otherwise*, indicating the intent of a state so to extend its boundaries (beyond three miles) is hereby approved and confirmed, without prejudice to its claim, if any it has, that its boundaries extend beyond that line."

The foregoing provision definitely gives to Louisiana the right to prove its boundaries extend more

than three miles into the Gulf of Mexico. It accords to any coastal state the right to establish its claim to submerged lands and waters more than three miles offshore. The concluding sentence in this same Section 4 of the Submerged Lands Act is specifically applicable to Texas and Florida and under a proper interpretation of Louisiana's act of admission is applicable to Louisiana also. This sentence reads:

> "Nothing in this section is to be construed as questioning or in any manner prejudicing the extent of any state's seaward boundary beyond three geographical miles if it were so provided by its constitution or laws prior to or at the time such state became a member of the union, or if it has been heretofore approved by Congress."

Section 4 of the Submerged Lands Act is thus explained in House Report No. 215, page 6, outlining the legislative history of the act:

> "Title II authorizes and confirms the boundaries of the coastal states to be 3 geographical miles distant from its coastline or the international boundary in the Great Lakes or any body of waters traversed by such boundary. While it approves claims of states to so extend their boundaries to that line, it provides further that Section 4 of the act is not to prejudice the existence of any state's historic seaward boundary into the Atlantic or Pacific Oceans or the Gulf of Mexico or any of the Great Lakes beyond these three miles if it was so provided by any treaty of the United States or any act of Congress or the

constitution or laws of the state prior to or when it entered the union or has been or shall be approved by Congress."

The original Holland Bill in the matter of historic boundaries was not changed in this respect by the Senate on final passage of the Submerged Lands Act. Senate Report No. 133, p. 2 states:

> "The only change of substance is found in Section 9, in which the jurisdiction and control of the Federal Government over the national resources of the sea bed of the continental shelf seaward of historic boundaries is confirmed. This assertion gives the weight of statutory law to the jurisdiction asserted by the proclamation of the President of the United States in 1945."

In this connection it may be noted that the presidential proclamation was made without prejudice to the claims of any of the coastal states. Louisiana, therefore, has the right to prove any way that it can, by oral or documentary evidence that its historic boundaries extend more than three miles in the Gulf of Mexico under the terms of the Submerged Lands Act itself.

The statement in the Texas brief that the extent of the Texas boundary is in no way controlling as to Louisiana is misleading and untenable in view of the "equal footing clause" contained in the acts of admission of all of the gulf coastal states, including Louisiana and Texas. Louisiana cannot be maintained on any equal footing with Texas and Florida if

the sovereignty of these latter states is declared to be three marine leagues distant in the gulf, and Louisiana is restricted to three geographical miles. If the Court should interpret Louisiana's act of admission to mean that Louisiana's seaward boundary is less than three leagues and that its sovereignty over the bed and waters of the gulf does not extend as far as the sovereignty of other gulf coastal states, it will do violence to the "equal footing clause".

Louisiana is not suggesting to the Court that the boundaries of Texas and Florida be restricted to three miles. These boundaries cannot be changed without the consent of these states as set forth hereinabove. Louisiana does say that it is entitled to be maintained on an equal footing with these states, and that its boundaries should be recognized in a way that will place Louisiana on an equal footing with its sister states in the Gulf of Mexico. If in considering this question it is necessary for the court to state what the boundaries of Texas and Florida are, this duty is not to be avoided simply because Texas and Florida are not parties to this litigation.

Further in its brief the State of Texas does not endeavor to support the position of either party litigant; its avowed sole purpose is to urge that this Court's decision as to the extent of state and national boundaries in the Gulf of Mexico should be limited to the State of Louisiana. Texas concludes, however, that the Submerged Lands Act should be interpreted so that submerged lands three leagues from the

Texas shore are owned by Texas because there was no dispute about the fact that the Texas Gulfward boundary was at such distance at the time the state became a member of the Union.

We emphasize the fact that there was no dispute about the Louisiana gulfward boundary at the time of its admission in 1812. The issue presently before the Court is not whether the United States disputed the claimed boundary of any state as it entered the Union, but rather whether the Congress gave the Submerged Lands Act meaning when it employed the following language:

> "Section 4. Seaward Boundaries.
>
> . . . Nothing in this section is to be construed as questioning or in any manner prejudicing the existence of *any* State's seaward boundary beyond three miles if it was so provided by its constitution or laws prior to or at the time such State became a member of the union, or if it has been heretofore approved by Congress." (Emphasis added).

In the Submerged Lands Act Congress was very careful to avoid limitation of State boundaries, even though the term "boundaries" was used, and did not see fit to describe the boundaries of coastal states, though Congress could have done so.

The Submerged Lands Act and the Outer Continental Shelf Lands Act together constitute the unmistakable assertion by the political branches of our

government, the President and the Congress concurring, as to the extent of our national territory and as to the further extent to which our nation asserts rights appertaining to our continent but beyond our national territory.

The extent of our national territory was made to coincide with the extent of the territory of the several states for in the Atlantic and Pacific Oceans the Submerged Lands Act quitclaimed to the littoral states the land to the extent of three miles from the coast and the Outer Continental Shelf Land Act defined the area with which it deals as being seaward of the land just described, and in said Act state limits in the Great Lakes were recognized as extending to the international boundary.

The same approach is made as to the Gulf of Mexico but recognizing that the vastly different physical nature of that coast (for one example islands here actually change position from year to year. Some have changed position as much as nine or ten miles) justified and required different treatment and provided for state boundaries being fixed as far as three leagues from coast if AS A MATTER OF FACT they were so located before or at the time the gulf states came into the Union or had thereafter so been recognized by the Congress.

This policy is a political question and has been decided by the political branches of our government.

The question of fact was left for judicial determination.

The Congress was fully aware of its own acts respecting the admission of the gulf states. All such acts were paraded before its committees before these two statutes, the Submerged Lands Act and the Outer Continental Shelf Land Act, were passed. Congress chose to establish a policy and to let the boundary be fixed judicially according to facts and according to other laws but within the scope of that policy.

The argument of the Solicitor General would negate all of this, would have the Court declare that any or every state which had a boundary more than three miles from coast before or at the moment of entering the Union had the excess sheared off and cast into the international arena as the state entered the Union. Such reasoning would render the Submerged Lands Act a Congressional and Presidential fraud upon the Gulf Coast States. If that reasoning stood, every Gulf Coast State would have to be limited to three miles from coast though the Congress and the President said otherwise.

If the Government's motion is overruled, as we think it must be, each state then presents its case.

On the face of the act of admission of Louisiana coupled with the clear language of the treaty of cession by which the purchase of the Louisiana territory was confected, it is clear that Louisiana has its boundary no less than three leagues from its coast. If this Honorable Court entertains any uncertainty of this score, Louisiana is surely entitled to submit evidence

to support its position which it could not do on the Government's motion.

There is no contest between the several Gulf Coast States, rather an opportunity is afforded to every one to establish its claim as respects that State and the Union.

The fact that any one Gulf Coast State can prove such a historic boundary, of course, should dispel the *notion* that there ever was a national limitation of three miles in the Gulf of Mexico. We call it a "*notion*" because no official declaration of such a policy has yet been cited excepting only the current letter from Mr. Dulles to Mr. Brownell.

We note that the International Law Commission of the United Nations saw fit to consider territorial sea widths of twelve miles as reasonable and not in violation of the principle of freedom of the seas. There is no reason why a delimitation of American Territorial Seas in the Gulf of Mexico to three leagues would be inconsistent with the principle of freedom of the seas. Congress itself has recognized this difference in the Gulf of Mexico. There is no reason, therefore, to resort to a strained interpretation to read any other meaning into the Submerged Lands Act.

We can conceive of no clearer expression which Congress could have made which would more unqualifiedly have set out equal rights of any and all states in the Gulf of Mexico to prove their historic boundaries.

We think the conclusion obvious that the Congress most certainly did have in mind the rejection of the three mile limit and the approval of an American territorial sea in the Gulf of Mexico not to exceed three leagues from coast.

Respectfully submitted,

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PROOF OF SERVICE

I, _____, one of the attorneys for the State of Louisiana, defendant herein, and a member of the Bar of the Supreme Court of the United States, certify that on the _____ day of June, 1957, I served copies of the foregoing Memorandum for the State of Louisiana Regarding the Motion of the State of Texas for Leave to File a Brief as Amicus Curiae, and the Memorandum by the United States in Response Thereto, by leaving copies thereof at the offices of the Attorney General and of the Solicitor General of the United States, respectively, in the Department of Justice Building, Washington, D. C., and by mailing copies thereof to the Attorney General of the State of Texas at Austin, Texas.

_____

OF COUNSEL